

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

TACOMA AVENUE INVESTORS LLC, a
Washington limited liability company,

Plaintiff,

v.

BANK OF THE WEST, a foreign profit
corporation,

Defendant.

Civil Case No.:

COMPLAINT

Plaintiff, by and through its attorneys, Charles A. Lyman and Brian C. Nadler of Schlemlein Fick & Franklin, PLLC, allege as follows:

I. PARTIES

1.1 Tacoma Avenue Investors (“TAI” or “Plaintiff”) is a Washington limited liability company in the State of Washington.

1.2 Bank of the West (“BOW” or “Defendant”) is a California foreign profit corporation licensed to do business in the State of Washington and with a principal office address of 180 Montgomery St. Fl. 25, San Francisco, CA 94104-4206.

II. JURISDICTION AND VENUE

2.1 Diversity jurisdiction exists under 28 U.S.C. § 1332(a)(1) because the action is between citizens of different states and the amount in controversy exceeds \$75,000, including attorney fees under *Fritsch v. Swift Transp. Co. of Ariz., LLC*, 899 F.3d 785, 794 (9th Cir. 2018).

1 the security procedure and any written agreement or instruction of the customer restricting
2 acceptance of payment orders issued in the name of the customer.”

3 4.4 As set forth above, BOW violated the provisions of RCW 62A.4A.202 by
4 accepting unauthorized payment requests in connection with a fraudulent account BOW
5 negligently authorized.

6 4.5 Moreover, as set forth above, BOW failed to maintain a commercially reasonable
7 security procedure, the failure of which led to the conversion from Plaintiff’s account by way of
8 unauthorized wire transfers to a fraudulently created account, of which Plaintiff immediately
9 notified BOW upon discovery.

10 4.6 In addition, because BOW failed to confirm authorization for the transfer and the
11 creation of the imposter Sage account, BOW failed to supervise the transaction in good faith.

12 4.7 RCW 62A.4A-240 states that “[i]f a receiving bank accepts a payment order
13 issued in the name of its customer as sender which is (i) not authorized and not effective as the
14 order of the customer under RCW 62A.4A-202, or (ii) not enforceable, in whole or in part, against
15 the customer under RCW 62A.4A-203, the bank shall refund any payment of the payment order
16 received from the customer to the extent the bank is not entitled to enforce payment and shall
17 pay interest on the refundable amount calculated from the date the bank received payment to the
18 date of the refund.

19 4.8 Given the foregoing, BOW is liable for the unenforceable transfer, and thus must
20 disgorge the wrongfully converted funds, as well as interest from the date of the transfer.

21 **Second Cause of Action – Negligence**

22 4.9 Plaintiff repeats and realleges the prior allegations of the Complaint and
23 incorporates them herein by reference.

24 4.10 BOW assumed a duty to use reasonable care to keep Plaintiffs account
25 information private and secure and not to establish fraudulent accounts. By the acts and omissions
26 described above, BOW unlawfully breached that duty.

4.11 Moreover, upon discovery of the fraudulent transfers, BOW assumed a duty to assist Plaintiff in the recovery of the funds stolen from its account. By the acts and omissions described above, BOW unlawfully breached that duty.

4.12. As a result of BOW's actions and omissions, Plaintiff incurred and continues to incur damages in an amount to be determined at trial.

Third Cause of Action – Breach of Fiduciary Duty

4.13 Plaintiff repeats and realleges the prior allegations of the Complaint and incorporates them herein by reference.

4.14 A fiduciary relationship arises when one party places trust and confidence in another party who is in a dominant or superior position.

4.15 Plaintiff placed its trust and confidence in BOW that BOW would maintain and enforce a commercially reasonable security policy.

4.16 Moreover, following Plaintiff's discovery of the fraudulent wire transfers, Plaintiff placed its trust and confidence in BOW that it would recompense the stolen funds, rather than abet criminal actions and behavior.

4.17 In the acts and omissions above, BOW breached its fiduciary duty to Plaintiff.

4.18 As a result of BOW's actions and omissions, Plaintiff incurred and continues to incur damages in an amount to be determined at trial.

V. REQUEST FOR RELIEF

Plaintiff seeks the entry of judgment against BOW for the following relief:

- a. Awarding compensatory and consequential damages;
- b. Costs, including reasonable attorney fees; and
- c. Such other relief as the Court deems just and proper.

DATED this 20th day of May, 2022.

SCHLEMLEIN FICK & FRANKLIN, PLLC

/s/ Charles A. Lyman
Charles A. Lyman, WSBA #30495

/s/ Brian C. Nadler
Brian C. Nadler, WSBA #51199

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